

## **REMARKS/ARGUMENTS**

### **Amendment to the specification**

The specification is amended herewith, in accord with the Examiner's instructions, to direct entry of the sequence listing into the specification. *See* Office Action, page 3 and MPEP 2422.03. No new matter is added by the amendment.

### **Amendment to the claims**

Claim 12 is amended, in accord with the Examiner's notation (Office Action, page 2), to correct an inadvertent typographical error in the identification of a particular sequence. Support for the amendment is found in at least the original claims. No new matter is added by the amendment.

### **Election**

Applicants understand the Office Action to be intended to require an Election of Species, despite the use of possibly inconsistent terminology, because (i) the Examiner indicates that MPEP 809—which discusses Election of Species—is the alleged basis for the present Restriction Requirement, (ii) each "Group" recites the same claims but differs by the species recited; (iii) each "Group" is classified in the same class and subclass; and (iv) the "Groups" are linked by a generic claim 1.

Applicants provisionally elect the species using an auxotroph transformed with a plasmid comprising *Lactococcus lactis subsp. Cremoris* DNA having the sequence of SEQ ID NO:7 (*i.e.*, "Group I"). Each of the pending claims read on this species. This election is made with traverse and solely to comply with the requirements of 37 C.F.R. § 1.143.

Applicants further respectfully note that claim 1 has been improperly omitted from the Groups. As it is a generic linking claim, claim 1 reads on each species and accordingly should be included in each Group. Moreover, "[i]f a linking claim is allowed, the examiner must thereafter examine species if the linking claim is generic thereto, or he or she must examine the claims to the non-elected inventions that are linked to the to the elected invention by such allowed linking claims." *See* MPEP §§ 809.03-04. Thus, claim 1 should be examined, and

rejoinder of the inventions of Groups I-V is respectfully requested in the event that claim 1 is found allowable.

### **Traversal**

Though the DNA sequences recited in the groups indeed distinct, Applicants respectfully submit that it would not be a serious burden to examine all groups of claims in a single application. Because these species are all used for the same methods, there will be substantial if not complete overlap in the potentially pertinent references. Moreover, each of the groups is classified in the same class and subclass, and accordingly, searching all of the species would not be unduly complicated. Finally, as all of the claims are generic to all of the species, there should be few differences in the non-prior art issues that might be encountered in the examination of each group.

For at least the foregoing reasons, Applicants respectfully submit that it would not be a serious burden for the Examiner to examine all of the species together, and accordingly, respectfully request reconsideration and withdrawal of the restriction requirement.


### **CONCLUSION**

Applicants submit that this response addresses all of the issues raised in the Office Action. Applicants further submit that claims 1, 9-12, 17, 24, and 28-32 are in condition for allowance and notice to that effect is hereby solicited. Should any issues remain to be discussed in this application, the Examiner is invited to contact the undersigned by telephone.

It is respectfully submitted that no fee is required for entry of this Response and reconsideration of this application. However, in the event any fees are deemed necessary, the Commissioner is authorized to charge such fees to the undersigned's Deposit Account No. **50-0206**.

Respectfully submitted,  
HUNTON & WILLIAMS LLP

By: \_\_\_\_\_

  
Jeff B. Vockrodt  
Registration No. 54,833

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Hunton & Williams LLP  
Intellectual Property Department  
1900 K Street, N.W., Suite 1200  
Washington, DC 20006-1109  
(202) 955-1500 (telephone)  
(202) 778-2201 (facsimile)